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No. 89-521

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

TRANSOIL (JERSEY) LTD. AND
TRANSOIL (U.S.A.), INC.,

Petitioners,

VS.

REX OIL, LTD. AND
EMPIRE PETROLEUM INTERNATIONAL, INC.,

Respondents.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

1. Did the United States Court of Appeals for the Fifth Circuit err in finding that maritime jurisdiction existed in the district court based on an agreement which had the purpose and the effect of releasing a sea-going vessel into commerce and in controlling the manner of nominating a successor vessel?

2. Did the United States Court of Appeals for the Fifth Circuit abuse its discretion in holding that District Judge Singleton properly entered judgment after the death of Judge Ross Sterling, pursuant to Rule 63, Federal Rules Civil Procedure, based on his conclusion that the findings made by Judge Sterling in open court and on the record at the conclusion of the case satisfied the requirements of Federal Rule of Civil Procedure 52(a)?

PARTIES TO THE PROCEEDING

See Memorandum for the Petitioners at II.

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REFERENCE TO OPINION BELOW

See Memorandum for the Petitioners at 1, and 1a-14a.

GROUNDS FOR JURISDICTION

Petitioners seek to appeal from that portion of the order rendered by the Fifth Circuit on May 19, 1989 which affirmed the judgment of the district court as it relates to jurisdiction and liability. Petitioners do not seek to appeal from that portion of the order which vacated the district court's damage

award and remanded that issue to the district court solely for an assessment of additional damages. Petitioners' Petition for Rehearing was denied by order dated June 22, 1989, which is reproduced in the Appendix. (Memorandum for the Petitioners at 15a). The jurisdictional authority for this court to review the judgment by writ of certiorari is contained in 28 U.S.C. Section 1254 (1).

STATUTES INVOLVED

The following provisions are applicable to this case:

1. U.S.C. § 1333(1)

"The district courts shall have original jurisdiction, exclusive of the courts of the states, of:

> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

2. Federal Rule of Civil Procedure 63, provides in relevant part:

> "If by reason of death, sickness or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any judge regularly sitting in or assigned to the court in which the action was tried may perform those duties. . . ."

3. Federal Rules of Civil Procedure 52(a), states in pertinent part:

> "In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately conclusions of law thereon, and judgement shall be entered pursuant to Rule 58 . . . it will be sufficient if the

findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. . . ."

COUNTERSTATEMENT OF THE CASE

On or about November 25, 1985, Plaintiffs Rex Oil, Ltd. ("Rex") and Empire Petroleum International, Inc. ("Empire") (Respondents herein) and Defendants Transoil (Jersey) Ltd. and Transoil U.S.A., Inc. (collectively "Transoil" or "Petitioners") entered into a contract under the terms of which Rex/Empire was to sell to Transoil U.S.A. approximately 80,000 barrels of distillate blend stock, later called luwa distillate. The contract of sale was subsequently amended.

On January 6, 1986, Transoil nominated the M/V JACINTH to transport the product. This vessel, however, was incapable of lifting more than 59,000 barrels. It was thus unable to transport the entire product in a single "lift," as required by the terms of the contract between Rex/Empire and Transoil. Nevertheless, 59,000 barrels of luwa were erroneously loaded onto the M/V JACINTH. When Rex/Empire requested that the cargo be unloaded, Transoil refused.

On January 9, 1986, Rex/Empire commenced this action in the United States District Court for the Southern District of Texas seeking a Rule D Supplemental Maritime Rules Writ of Attachment of the M/V JACINTH. Rex/Empire contended that they owned the luwa pursuant to a contract of sale between themselves and another entity and that the M/V JACINTH was preparing to depart the jurisdiction for a foreign destination, with the 59,000 barrels of luwa on board, thereby removing the cargo forever from Rex/Empire's control.

The next day, January 10, 1986, the parties held an emergency hearing before the Hon. Ross N. Sterling, United States District Judge for the Southern District of Texas. There Rex/Empire and Transoil reached an agreement providing for the release of the M/V JACINTH and the sale/transportation of another 80,000

barrels of luwa. The product on board the M/V JACINTH was to be sold to a third party. The agreement further provided that: "If Transoil does not nominate a vessel to lift the cargo by January 31, 1986, plaintiffs may present negotiable warehouse receipts and obtain full payment for the said 80,000 bbls." This agreement was reduced to writing in an Agreed Order which was signed by Judge Sterling on February 21, 1986. (The Agreed Order is Reproduced in the Appendix.) Memorandum for the Petitioners at 42a-45a.

On Friday, January 24, 1986, at approximately 7:00 p.m. E.S.T., Transoil purportedly nominated the M/V SLETHAV to lift the luwa cargo in Houston. The ship allegedly presented "notice of readiness" to be loaded on Saturday, January 25, 1986. *Id.* at 4a. Rex/Empire, however, did not receive notice of the arrival of the M/V SLETHAV until Monday, January 27, 1986, at approximately 9:45 a.m., C.S.T. Furthermore, the nomination of the M/V SLETHAV violated Transoil's own nominating procedures as well as the procedures set out in the agreement of January 10, 1986 by which the first vessel had been released.

Because of the expenses incurred in holding the M/V SLETHAV over the weekend, Transoil released the ship, without the luwa, at noon on Monday, January 27, 1986. When Transoil failed to nominate another vessel by January 31, 1986, Rex/Empire presented negotiable warehouse receipts endorsed to Banque Paribas for full payment for the 80,000 barrels of luwa. At the direction of Transoil, Paribas refused to pay Rex/Empire upon the presentment of the instruments.[1]

Rex/Empire amended their complaint to include a cause of action against Transoil for breach of the January 10, 1986 agreement by virtue of Transoil's having failed to nominate a successor vessel by January 31, 1986. Judge Ross N. Sterling presided over a non-jury trial on April 8 and 10, 1987 during which

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[1] Rex/Empire also brought proceedings in a Swiss court against Banque Paribas involving the right to payment under the letter of credit. To date all efforts to obtain payment from Banque Paribas have been unsuccessful.

Transoil contended that the nomination of the M/V SLETHAV was properly effected and that Rex/Empire accepted the nomination but failed to deliver the cargo. Judge Sterling held a final hearing on June 18, 1987 to elicit further arguments from counsel and to issue findings and conclusions which he stated into the record.

At the hearing on June 18, 1987 the Court determined that it had subject matter jurisdiction based on a maritime contract, that Transoil breached the agreement of January 10, 1986, and that judgment would be entered against Transoil. (The Transcript of that hearing is reproduced in the Appendix.) at 19a-41a. In so finding, Judge Sterling explained that, regardless of what had taken place prior to January 10, 1986, on that date the parties reached an agreement "the object of which was to return the JACINTH to commerce. It is my conclusion that that agreement was a maritime contract." *Id.* at 20a.

During the hearing, Judge Sterling related his basic reasoning for entering a judgment in favor of Rex/Empire. He also indicated that he planned "to file detailed findings and conclusions." *Id.* at 39a. Approximately eight months later, before filing such further findings and conclusions, Judge Sterling died. Thereafter, Judge John V. Singleton, Jr., entered judgment against Transoil (Jersey) Ltd. and Transoil U.S.A. on February 4, 1988, in the amount of $702,400.00, plus pre-judgment interest and post-judgment interest. Defendants filed a Motion for a New Trial, which was denied.

Defendants perfected their appeal to the United States Court of Appeals for the Fifth Circuit. By Opinion dated May 19,1989, the Fifth Circuit concluded that the district court did have subject matter jurisdiction of the case and that Judge Singleton properly entered final judgment because Judge Sterling's extensive oral exposition of his perceptions about the case on the record "were sufficient findings of fact and conclusions of law to satisfy Rule 52(a)." *Id.* at 1a-14a. The Fifth Circuit, however, vacated the district court's damage award and remanded the damage

issue to the district court for further consideration.[2] The district court has not yet scheduled a trial on this issue.

CERTIORARI SHOULD BE DENIED

A. *Subject Matter Jurisdiction*

A key issue in this dispute is a purely factual one limited to the particular facts of this case. After hearing all the presentations did Judge Sterling conclude correctly that the January 10, 1986 agreement was a maritime contract the purpose and effect of which was to release the M/V JACINTH and guide the parties as to the selection of a new vessel?

The cases uniformly hold that if the non-maritime elements are inseparable from the maritime elements then the agreement is within admiralty jurisdiction. *See* discussion at pp. 8-9, *infra*. Here the purpose of the agreement and the key to its breach was the selection of a vessel to replace the M/V JACINTH and thereby allow the M/V JACINTH to return to commence. Further, the central issue before Judge Sterling at trial was whether Transoil breached that agreement by failing to nominate a successor vessel on or before the January 31, 1986 deadline. Applying the principle of admiralty law cited above to the unique facts presented here, Judge Sterling found that the January 10th agreement was a maritime contract thus vesting the court with admiralty jurisdiction. The Fifth Circuit affirmed.

Transoil does not take issue with the admiralty law principles applied by the district court and the Fifth Circuit. Rather, it objects to the result of applying those principles to the particular facts at issue here. Consequently, Transoil's objection is without merit and, in any event, is certainly not a matter of general interest or importance, warranting the granting of its Petition.

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[2] The district court awarded Rex/Empire its lost profit: $702,400 representing the total contract price minus the purchase price Rex/Empire was to pay another entity. The Fifth Circuit, however, held that award did not place Rex/Empire in the position they occupied before Transoil's breach, rather Rex/Empire were $537,600 short. Consequently, the Fifth Circuit remanded the damage issue to the district court for further consideration consistent with its opinion.

B. *Judge Singleton's Entry of Judgment Pursuant to F.R.Civ. P. 63 Based on His Conclusion That Judge Sterling's Findings of Fact Were Sufficient to Satisfy the Requirements of F.R. Civ. P. 52(a)*

Judge Sterling's successor, Judge Singleton, entered judgment on the basis of Judge Sterling's oral findings on the record at the June 18, 1987 hearing. The Fifth Circuit later agreed with Judge Singleton that those statements constituted findings of fact and conclusions of law and that it was not necessary that lengthy more detailed repetition of them be written into a more formal document. The discretionary nature of that decision mitigates against granting a writ of certiorari.

The issue of whether Judge Sterling's verbal pronouncements were sufficient to constitute findings of fact and conclusions of law as required by Rule 52 of the Federal Rules of Civil Procedure is similarly one best decided by the reviewing court and is also the type of issue which is by nature dependent on the particularities of each case. Beyond that, the discretionary power of the appellate court to make such a determination is well-settled among the circuits. The Fifth Circuit's analysis of Judge Sterling's findings was consistent with decisions of this Court and of the circuits and does not constitute a matter of such import as to warrant further review.

In sum, the decision that Transoil seeks to have this Court review represents the correct application of ordinary rules in an unexceptional manner in an unusual case. Its Petition should be denied.

ARGUMENT

THE FIFTH CIRCUIT CORRECTLY HELD THAT THE AGREEMENT WAS A MARITIME CONTRACT

Transoil argues that the district court lacked subject matter jurisdiction to hear this case. It contends that this dispute concerns nothing more than a land-based agreement for the sale and purchase of a distillate product and that the transportation of the product was to be effected by ocean-going vessel did not bring the case within the court's admiralty jurisdiction. According to Transoil, since the original contract was not maritime in nature, it was improper for the court to issue a Rule D Writ of Attachment. Notwithstanding that the January 10, 1986 agreement involved the dissolution of the writ, Transoil argues that the agreement should not permit the respondents to "bootstrap" the creation of admiralty jurisdiction when it never existed in the first place.

However, the district court found, correctly, that the January 10, 1986 agreement was a maritime contract. Judge Sterling reasoned that the parties to that agreement understood that the M/V JACINTH could not leave Houston until the Writ of Attachment had been dissolved. Hence, Judge Sterling, who, as the Fifth Circuit recognized, "directly witnessed the negotiations between the parties" and was, therefore, "in the best position to know the purpose of the agreement," plainly found as fact "that the purpose of the agreement was to 'release the vessel by these mutual promises.' " Memorandum for the Petitioners at 8a. The dispute which ensued, and the essence of the breach on which liability was determined, was also purely maritime in nature: Transoil's failure to nominate a successor vessel by the January 31, 1986 deadline. Judge Sterling, thus, concluded as a matter of law that the maritime contract vested admiralty jurisdiction in the district court.

The Fifth Circuit's decision holding that the district court had admiralty jurisdiction is in accord with two well settled principles of admiralty law. To invoke admiralty jurisdiction over

the contract, the subject matter of that contract must be wholly maritime, *i.e.* it must directly concern navigation or commerce on navigable waters. *Kossick v. United Fruit Co.*, 365 U.S. 731, 735, 81 S.Ct. 886, 890, 6 L.Ed.2d 56 (1961); *Insurance Company v. Dunham*, 7 U.S. (11 Wall) 1, 20 L.Ed. 90 (1870); *Best v. Honeywell, Inc.*, 491 F. Supp. 264, 271 (D. Conn 1980), *aff'd mem.*, 679 F.2d 872, 874 (2d Cir. 1981); *R. Maloblocki & Associates, Inc. v. Metropolitan Sanitary Dist. of Greater Chicago*, 369 F.2d 483, 494 (7th Cir. 1966). Further, a contract consisting of maritime and non-maritime elements is cognizable in admiralty if the non-maritime elements of the agreement are incidental to the maritime elements, or if the non-maritime elements are inseparable from the maritime elements. *See, Flota Maritime Browning de Cuba v. Snobl*, 363 F.2d 733, 735 (4th Cir.), *cert. denied*, 385 U.S. 837, 87 S.Ct. 82, 17 L.Ed.2d 282 (1966); *Puerto Rico Maritime Shipping Authority v. Luallipan, Inc.*, 631 F. Supp. 1472, 1474 (D. Puerto Rico 1986).

Here, the Fifth Circuit concluded correctly that because Judge Sterling found that the purpose and effect of the January 10, 1986 agreement was the return of the M/V JACINTH to commerce and given Transoil's concurrent commitment to nominate a successor vessel, the non-maritime elements of the agreement, to the extent they existed, were incidental. Furthermore, because the release of the M/V JACINTH was part of the consideration Rex/Empire gave Transoil, the provisions for the subsequent purchase and sale of luwa were so intertwined with and dependent upon the release of the vessel as to be inseparable from it. Accordingly, the Fifth Circuit had no difficulty concluding as a matter of law that the district court had subject matter jurisdiction.

There is no fault in the Fifth Circuit's analysis. Indeed, common sense dictates that if admiralty—the release of the M/V JACINTH—were not central to the agreement, Rex/Empire would not have sought a Rule D attachment nor would there have been any emergency for Judge Sterling to have had to deal with. Implicitly recognizing this, Transoil argues that even if

the agreement is a maritime contract thus vesting jurisdiction in the district court, the district court erred by allowing "subject matter jurisdiction to be created by agreement [between the parties] or even waiver."

Transoil's contention is wholly baseless since the record is devoid of the slightest indication that the parties negotiated and executed the January 10, 1986 agreement in an effort to circumvent the federal rules regarding jurisdiction. Rather, that agreement was entered into, under the strict supervision of Judge Sterling, in order to effectuate the release of the M/V JACINTH into commerce and to set forth terms under which a successor vessel would be nominated. The fact that an effect of that agreement was to trigger or confirm admiralty jurisdiction in the district court does not support Transoil's inference that the parties "agreed" to create subject matter jurisdiction.

In sum, the essence of petitioners' position is that the district court and the Fifth Circuit mischaracterized the January 10, 1986 agreement as a maritime contract rather than a sales agreement which tangentially involved a ship. That argument, however, is belied by the record which reveals that the key issue before Judge Sterling was whether Transoil breached its obligation to nominate a successor vessel (and not one in which such sales terms as price or quantity of the luwa were in dispute). Moreover, the character of the agreement is purely maritime in flavor, essentially devoted to providing the terms pursuant to which the M/V JACINTH would be returned to commerce. The single mention in that agreement that Transoil would purchase from Rex/Empire 80,000 bbls. of luwa at an agreed price of $15.50 per bbl. does not alter that character. Rather, it is those sales terms which are tangential to an agreement which primarily concerns the status of a sea-going vessel.

Transoil, moreover, fails to contend that the principles of admiralty law applied by the district court and the Fifth Circuit were inconsistent with those held to apply by this Court or by any other circuits. Nor do petitioners argue that any alternative or additional standards should have been applied. In short, petitioners' claim is nothing more than a disagreement regarding

the outcome of the litigation. This hardly raises questions of such import or interest as to warrant additional review by this Court.

II

THE FIFTH CIRCUIT CORRECTLY HELD THAT JUDGE SINGLETON ACTED PROPERLY IN ENTERING JUDGMENT PURSUANT TO F.R. CIV. P. 63 BECAUSE THE FINDINGS MADE BY JUDGE STERLING IN OPEN COURT AND ON THE RECORD AT THE CONCLUSION OF THE CASE WERE SUFFICIENT TO SATISFY THE REQUIREMENTS OF F.R. CIV.P. 52(a).

Petitioners urge that F. R. Civ. P. 63 mandates a new trial because Judge Sterling did not file findings of fact and conclusions of law prior to Judge Singleton's entry of final judgment. Petitioners argue that the "negative inference" of Rule 63 precludes a successor judge from entering final judgment when the predecessor judge has failed by reason of death, sickness or other disability, to file findings of fact and conclusions of law. Since Judge Sterling never "filed" such findings, according to Transoil, it was improper for Judge Singleton to enter final judgment.

None of the cases cited by petitioners support their claim that Judge Singleton erred in entering judgment because Judge Sterling died prior to his filing of more formal findings. Indeed, in all but two of the cases, the presiding judge died, or recused himself, prior to making *any* findings, oral or written, and, therefore are distinguishable from the case here where Judge Sterling announced significant findings on the record. Of the two remaining cases, one, *Brennan* v. *Grisso*, 198 F.2d 532 (D.C. Cir. 1952), resulted in a new trial because the presiding judge passed away prior to considering certain new, and potentially dispositive, evidence submitted after the trial, and the second, *Thompson v. Sawyer*, 678 F.2d 257 (D.C.Cir. 1982), did not reach the issue of the sufficiency of the presiding judge's findings of fact and conclusions of law because the successor judge exercised his discretionary power under Rule 63 to order a new trial because of the complex nature of the litigation. *Id.* at 269.

The District of Columbia Circuit in *Thompson v. Sawyer, supra*, recognized, as did the Fifth Circuit here, that Rule 63 leaves entirely to the discretion of the successor judge the decision to perform the duties left unfinished by the predecessor or, in the alternative, to order a new trial. Judge Singleton, in exercising his discretion, found Judge Sterling's findings sufficient to enable him to enter judgment. The Fifth Circuit affirmed Judge Singleton's conduct.

Petitioners argue that Judge Singleton erred because Judge Sterling's findings were purportedly insufficient to meet the requirements of F.R.Civ. P. 52(a). To begin with, Rule 52 does not require that the findings be of any particular length or that they be expansive and particularly detailed. All that is needed is that the findings afford the reviewing court a clear understanding of the factual basis for the trial court's decision and permit intelligent appellate review. *Kelly v. Everglades Drainage Dist.*, 319 U.S. 415, 422, 63 S. Ct. 1141, 1145, 87 L. Ed. 1485 (1943); *Krieger v. Gold Bond Building Products*, 863 F.2d 1091, 1097 (2nd Cir. 1988); *Badgley v. Santacroce*, 815 F.2d 888, 889 (2nd Cir. 1987) (per curiam) (and cases cited therein); *Ratliff v. Governor's Highway Safety Program*, 791 F.2d 394, 400 (5th Cir. 1986); *Interfirst Bank of Abilene, N.A. v. Lull Manufacturing*, 778 F.2d 228, 234 (5th Cir. 1986). Put another way, nothing in the rule requires "either punctilious detail or slavish tracing of claims issue by issue and witness by witness." *Kelly v. Everglades Drainage Dist., supra*, 319 U.S. at 422. *See also, United States v. Forness*, 125 F.2d 928 (2d Cir. 1942), *cert. denied*, 316 U.S. 694, 62 S. Ct. 1293, 86 L. Ed. 1764 (1942) (The trial court need only make brief, definite, pertinent findings and conclusions on the contested matters).

The Fifth Circuit was satisfied that Judge Sterling had "stated his reasoning [behind his findings] with sufficient force and particularity for the Fifth Circuit to understand them and to find that they were not clearly erroneous."[3] There is nothing in the

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[3] Further, in setting forth the pertinent facts, the Fifth Circuit characterized Judge Sterling's oral statements at the June 18, 1987 hearing as "a fairly extensive oral exposition of his perceptions about the case."

record to indicate otherwise or to imply that the Fifth Circuit deviated from the parameters of Rule 52(a) in analyzing Judge Sterling's findings.

Petitioners seem to place dispositive force in Judge Sterling's stated intentions to "file" more detailed findings of fact and conclusions of law. In doing so, Transoil apparently means to suggest that had Judge Sterling put in writing his oral findings verbatim or added a few citations to them rather than merely stating them orally into the record, Transoil would not be able to complain about their format. It is hard to imagine a more trivial issue for this Court to entertain.

As the Fifth Circuit aptly noted, the fact that Judge Sterling stated that he then intended to write a more detailed opinion did not render the findings and conclusions stated orally and recorded in open court insufficient. "Recognition of what Judge Sterling intended to do does not vitiate what he actually did. His oral findings of fact and conclusions of law were adequate to satisfy Rule 52(a)."[4]

Finally, the case law cited by petitioners fails to establish that a conflict exists between either the Fifth Circuit and this Court or among the circuits regarding the degree of particularity with which the district court must articulate its findings of fact and conclusions of law under Rule 52(a). Rather, those cases reveal that in applying Rule 52(a), courts analyze the findings of fact and conclusions of law unique to that particular matter and determine whether the findings are sufficient in light of the peculiarities of that individual case. Rule 52(a), thus, does not lend itself to narrowly defined principles instructing courts what

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[4] Further, the Fifth Circuit implicitly recognized that under Rule 52 it is "sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence." While Rule 52 provides, *alternatively*, that such findings may "appear in an opinion or memorandum of decision filed by the court," the Fifth Circuit concluded properly that Judge Sterling's oral findings on the record at the conclusion of the case sufficiently satisfied the requirements of Rule 52.

constitutes sufficient findings of fact to allow suitable appellate review. Rather, it is a matter better left to the discretion of the reviewing court.

The decision of the Fifth Circuit was entirely correct. Since the guidelines were stated in the record it was not an abuse of discretion to have them formalized by the entry of judgment on them. *See, Lujan v. New Mexico Health & Social Services Dept.*, 624 F.2d 968, 970 (10th Cir. 1980) *citing Kelly v. Everglades Drainage Dist., supra*, 319 U.S. at 442. Moreover, since any issue concerning the sufficiency of findings and conclusions could only be considered on a case by case basis this matter involves no issues of such far reaching consequence or of general importance to warrant this Court's review.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for writ of certiorari should be denied.

Respectfully submitted,

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